IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

MFA.No. 899 of 2001()

OA.43/2000 of FOREST TRIBUNAL, KOZHIKODE
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APPELLANT/APPLICANT:

VAZHAKUNDU ESTATES, BY MANAGING PARTNER C N GEORGE, VAZHAKUNDU ESTATES, NELLIAMPATHY, NENMARA, CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.P.SANTHALINGAM
SRI.A.D.SHAJAN

RESPONDENTS/RESPONDENTS:
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1. CHIEF SECRETARY TO GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

2. CUSTODIAN – SPL. OFFICER AND CHAIRMAN VESTED FORESTS COMMITTEE CALICUT. 17.

BY ADV. SPL.GOVT.PLEADER (FOREST) SRI.M.P.PRAKASH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.899 OF 2001

Dated 26th November, 2007

JUDGMENT

Koshy,J.

Three original applications, O.A.Nos.43, 44 and 45 of 2000 (Old Nos.43, 44 and 45 of 1977), were heard together by the Tribunal and rejected by order dated 9th January, 2001. No appeal has been filed from O.A.Nos.44 and 45 of 2000. So, the findings in the above O.As in respect of the lands covered by those O.As have become final and now we are only concerned with O.A.No.43 of 2000. O.A.No.43 of 2000 was filed for a declaration that 239 acres of plantations are excluded from the definition of private forest and no part of the said area is private forest. The above claim was originally allowed by the Forest Tribunal based on Exts.A5, A6 and A7 documents and Exts.C1 and C2 plan and report of the Commissioner. State filed an appeal. In the appeal, by judgment in M.F.A.No.382/1982 the matter was remanded with the following remarks:

> "Since the applicant has not entered appearance in this appeal and there is no material to take a decision on these aspects, we are unable to decide these points. Under the circumstances, the order of the Forest Tribunal in O.A.No.43/1977 is set aside. The said application is remanded to the Forest Tribunal for fresh consideration and

> disposal. The Tribunal will consider whether the applicant is entitled to get a declaration under Section 8 in respect of any extent of land where there are structure (including the land appurtenant thereto) the land used for nursery and the land used as wind belt or fire belt or for any other purpose allowable under law."

After remand, the Tribunal dismissed the O.A. Appellant filed M.F.A.No.536 of 1992. This court remanded the matter again for de-novo consideration. After that the impugned order was passed. That is challenged again contending that even the observations in the earlier remand order were not considered by the Tribunal. It was also contended that in view of the commissioner's report it is clear that there were cardamom and coffee plantations on the appointed day. Learned Government Pleader questioned the locus standi of the appellant in filing the O.A. and also submitted that Tribunal has considered the evidence and, therefore, appeal has to be dismissed. Counsel for the appellant produced a certified sketch of the estate of the appellant. The above certified sketch was made by the re-survey department at the time of re-survey before the Act came into force. According to the appellant, it would show that it was a developed estate at the time when the Act came into force and since it was a developed estate planted, it is not a private forest vested in the Government under Section 3(1) of the Act. If it is not a private forest

on the appointed day, the land will not be vested in the Government and question of producing registered title deed to claim exemption under section 3(2) of the Kerala Private Forests (Vesting & Assignemnt) Act will not arise. According to the appellant, he got the sketch which was in possession of the State only after the decision by filing a petition under the Right to Information Act. We are of the view that, the above has to be proved in evidence and both parties can adduce evidence regarding the admissibility and evidenciary value of the additional documents, and, therefore, without making any observations on the merits of the matter we remand the matter for passing a de novo order considering all aspects of the matter. The impugned order is set aside. The Tribunal has to consider the effect of the sketch and additional documents and pass fresh order. Both sides are allowed to adduce evidence. Status quo as on today shall be maintained till final order is passed. Parties shall appear before the Tribunal on 14.1.2008.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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